

APPEAL NO. 050472
FILED MARCH 30, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 10, 2005. The hearing officer resolved the disputed issues by deciding that on _____, the appellant (claimant) did not sustain a compensable injury and that the claimant did not have disability. The claimant appealed, disputing both the compensable injury and disability determinations. The respondent (carrier) responded, urging affirmance and requesting that the statements made in the claimant's appeal that were not contained in evidence at the CCH be disregarded. The carrier additionally contends in its response that the claimant's appeal was untimely.

DECISION

A timely request for review not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The records of the Commission reflect that the decision of the hearing officer was distributed on January 28, 2005, under a cover letter of the same date. The claimant states in her request for review that she received the decision of the hearing officer on February 4, 2005. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision 5 days after it was mailed. Also, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. We note that in the present case the Commission's record shows that the hearing officer's decision was mailed on January 28, 2005, to the claimant at the same address provided by the claimant on the sign-in sheet at the CCH. The claimant was deemed to have received the hearing officer's decision on February 2, 2005.

The claimant's appeal needed to be mailed no later than February 24, 2005, the 15th day from the date she was deemed to have received the hearing officer's decision. The claimant's request for review was sent to the Commission by U.S. mail, was postmarked February 25, 2005, and was received by the Commission on March 1, 2005. Thus, the appeal is untimely.

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final. Section 410.169.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES H. MOODY, II
901 MAIN STREET
DALLAS, TEXAS 75202.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge